

DATE: December 28, 2007

In re:)
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SSN: -----)

Applicant for Security Clearance)
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ISCR Case No. 07-08321

**DECISION OF ADMINISTRATIVE JUDGE
PHILIP S. HOWE**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and works for a defense contractor in administrative assistant positions. She filed Chapter 7 bankruptcy twice, once in 1986 and again in 1995. She filed Chapter 13 bankruptcy in 2004, and successfully completed it in 2007. Applicant changed her financial behavior since 2004 and mitigated the financial considerations security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On August 15, 2007, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on August 27, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on October 2, 2007. On November 15, 2007, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. I kept the record open until November 29th to allow Applicant to submit additional exhibits. She submitted three exhibits to which the Government had no objection. I marked them as Exhibits F-H. DOHA received the hearing transcript (Tr.) on November 27, 2007.

FINDINGS OF FACT

Applicant's admissions to all of the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 49 years old, divorced and widowed from her two husbands, and the mother of two adult daughters. She works as an administrative assistant to a defense contractor manager. She lives with a friend whom she has known since 2003. He is educating her about financial matters. They both contribute to a savings account which has about \$7,000 in it. Applicant also has her own savings account with \$500 in it. Applicant pays the monthly bills that are in her name, including four credit card bills. Applicant earns about \$2,400 monthly, and her companion earns another \$3,500 monthly. Applicant has about \$3,500 in credit card debt, which she pays at the rate of \$260 monthly in total on the debt. Her plan now is to pay off that debt by June 2008. Applicant changed her spending habits from the past twenty years, and now buys only when a purchase of clothing or other items are necessary. For the past five years, Applicant contributed to her Section 401(k) retirement plan on a regular basis, trying to save money for her future. She is also working on preparing a budget and reading financial self-help books, or listening to tapes on the same subject. (Tr. 33-41, 48-51, 65-69, 74-85; Exhibits 1, G)

Applicant filed Chapter 7 bankruptcy in 1986. She purchased a house for herself and her daughter about two years earlier. Then she was laid off from her job, and could not afford to keep the house and pay her debts. The house was foreclosed by her lender. She was discharged in Chapter 7 bankruptcy in 1987. (Tr. 26; Answer)

Applicant married in 1991. She had two daughters at that time. Unbeknownst to Applicant, her husband had financial and alcohol problems dating before their marriage. He did not work

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

during their marriage. Her husband died in April 1996. Before he died, they filed a joint Chapter 7 bankruptcy in March 1995, to discharge his debts and hers. The discharge was granted in October 1995. The total debts included in the bankruptcy Schedules D-F was \$90,431. That bankruptcy petition was granted by the court in October 1995, and Applicant's debts were discharged. Of the total debts, Applicant now claims her portion totaled \$3,881, and her late husband's portion was \$75,710. She did not explain the \$11,000 difference in the two totals. (Tr. 28-30; Exhibits 2, 3, 5, 7, H)

Applicant remarried in 2000. She was divorced in 2004. She separated from her husband in 2002. She filed a Chapter 13 bankruptcy in March 2004. That bankruptcy included various debts, and federal, state, and local income debts for 2003. Applicant reduced her withholding to give herself more cash each month, but the withholding was insufficient to pay her total taxes due. Applicant paid the bankruptcy trustee \$247 monthly starting in June 2004. She successfully completed that bankruptcy and was discharged in May 2007. Applicant included debts of her former husband in the bankruptcy filing. Of the total debts discharged, \$7,938 were Applicant's debts, and \$5,452 were incurred by her husband. (Tr. 31, 32; Exhibits 1-4, 6, G, H)

Applicant is considered by her supervisors and co-workers to be very competent, a dedicated worker with high ideals, having integrity and ambition, and with good judgment. They also consider her to be logical and practical. Her work is done in a timely and thorough manner. (Exhibits A-D)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the

individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Guideline F: Financial Considerations: The Concern: Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which could raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

CONCLUSIONS

Financial Considerations: Applicant has a history of not spending her income in a responsible manner. In each of the present and previous two decades, she filed bankruptcy to rid herself of her debts. The first two bankruptcies in 1986 and 1995 were Chapter 7 bankruptcy actions, in which all of her debts were eliminated under the bankruptcy law. In 2004, she filed a Chapter 13 bankruptcy action, and consistently made her monthly payments until she completed the plan in June 2007. The disqualifying conditions applicable are Financial Considerations Disqualifying Condition (DC) ¶19.a. (inability or unwillingness to satisfy debts), and ¶19.c. (a history of not meeting financial obligations).

Applicant filed her 1986 bankruptcy when she lost her job. That situation was beyond her control, and she had little money with which to pay her debts. Bankruptcy is a legal mechanism by which a person may eliminate debt they are unable to repay. Her second bankruptcy in 1995 occurred when her first husband disclosed his excessive debts incurred before their marriage. He did not work during the marriage. They filed Chapter 7 bankruptcy and were discharged in October 1995. Her latest bankrupt occurred because of debts she and her former second husband incurred during their marriage. She used the Chapter 13 installment payment plan under the protection of the bankruptcy court to repay those debts.

Applicant has changed her financial ways since 2004. She faithfully executed the Chapter 13 plan over a three-year period. She now is preparing a budget to guide her monthly expenditures. She changed her attitude toward spending with the help of her companion, and now only spends to buy necessities, not on whims. She saves money into two savings accounts and her Section 401(k) plan. Her credit card debts are being paid monthly in the amount of \$260 on a \$3,500 debt. Her companion instructs her on proper financial procedures. Her financial problems are resolved through bankruptcy and under control making a recurrence unlikely.

Under these facts, the three Financial Considerations Mitigating Conditions (MC) apply: ¶20.b (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances); ¶20.c. (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control); and, ¶20.d (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance.” AG ¶ 2(a). “Each security clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy.” Directive ¶ 6.3. “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” AG ¶ 2(a). In evaluating Applicant's case, I have considered the adjudicative process factors listed in the AG ¶ 2(a).

There are nine adjudicative factors to apply. All nine are relevant to Applicant's past financial situation. The continued spending of money without a plan to repay it, resulting in three bankruptcy actions in the past nineteen years is serious conduct. However, in each case there were external forces which contributed to those actions.

Next, while Applicant should have saved more of her money, spent less, and planned ahead, her job loss in 1986, and then her first husband's pre-marital financial and alcohol problems, contributed to situations which left Applicant little choice but to file Chapter 7 bankruptcy in 1986 and 1995. In 2004, while divorcing her second husband, she resolved her financial problems with a plan to repay her debts. Since then, she had not repeated her behavior, and seems to be controlling her spending over the past three years.

She lives with someone who is providing her with good financial advice on restraining her spending. In contrast to her present behavior, her past spending and bankruptcies were frequent, and the latest was recent.

Applicant was a mature adult when she incurred the financial problems, but she sought legal advice to extricate herself instead of ignoring her creditors or walking away from her problems. She testified to changes in her behavior and she was credible and persuasive in that explanation. Her companion who testified about their spending and saving habits now was also credible. She is rehabilitated under his guidance.

Her earlier spending was motivated by spending for herself and daughters, and she spent too much money. But none of her bankruptcies showed debts exceeded \$10,000, indicating that her debts were comparably minor.

The totality of the testimony and evidence shows Applicant is a hard-worker, logical and competent who now has her personal spending under control. There is little or no likelihood that pressure, coercion, exploitation, or duress to disclose classified information because of her past financial problems. Applicant struggled through two bad marriages, three bankruptcies, and raising two daughters. She has 17 years before she can retire, draw Social Security, and enjoy life. Her changed behavior and attitude gives her the chance to put more money into her Section 401 (k) plan toward that retirement. Without a change in her behavior and with three bankruptcies on her record, she would be in financial difficulties again.

Based on all of the evidence, I conclude the Financial Considerations security concern for Applicant. I also conclude the "whole person" concept for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe
Administrative Judge